

**MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING
TOWN HALL COMMUNITY ROOM
August 23, 2005**

Present

HJ: Henry Jungmann, Chairperson	JZ: Jeanne Zarba	LC: Lori Capone, Director
RS: Robert Sherburne, Vice Chair	JK: Jeff Kablik	GC: Gloria Clancy, Clerk
LG: Lucy Gertz	FZ: Frank Zarba	

Absent

CH: Cynthia Hanna BL: Brian Logue, Associate Member

7:00 Meeting opened by Henry Jungmann, Chairperson

7:02 Aline Roy – 18 Bridle Path Way – Notice of Intent: (Map 27, Parcel 64) (Continued from 6/14 & 6/28, 7/12& 7/26/05) Proposed construction of a single family home, driveway, retaining walls, septic system and associated utilities within the buffer zone. LC told the members that we are in receipt of a request to continue, as the applicant is still awaiting a decision from Town Counsel Zaroulis on whether the lot is “grand-fathered” as a buildable lot.

JK: Motion to continue this hearing to September 27th at 7:02 P.M.

LG: 2nd.

Unanimous (6-0).

Other Business:

David Kelly of Land Tech Consultants, Inc. explained some proposed changes to the Ch.40B Merrimack Landing Project. He passed out copies of plans and asked for an informal discussion regarding the proposed changes. He asked for the Commission to decide whether the applicant should file for an Amendment or whether the changes are substantial enough to require a new Notice of Intent filing. There was much discussion. Though Mr. Kelly explained that the impacts to the wetlands will not vary by very much, and that the Zoning Board of Appeals is reviewing it as an Amendment, the consensus was that the changes are major changes and will require a new Notice of Intent filing.

7:15 (7:22) Ann Tinnirella – End of Beech Tree Road: Conduct a hearing pursuant to an Order of Judgement by the Superior Court, dated May 23, 2005, whereby this matter is remanded to the Conservation Commission for further hearing and determination of the ownership of the affected property. LC said that Attorney McNeil, Mr. Shyjan’s attorney, has requested a continuance as they are having a Title Search performed. JK wanted it noted that he feels this matter of ownership is outside of our jurisdiction. He cannot understand why the court has remanded the issue back to us. LC said that Town Counsel will be in attendance to assist us through the process.

JK: Motion to continue this hearing to September 27th at 7:15 P.M.

RS: 2nd.

Unanimous (6-0).

Other Business:

Gregg Rosen of NES Group(New England Security) a bank design and consulting firm told the members of an upcoming project for a Digital Credit Union branch at the site of the old Anthony's In-land Pier. The plan calls for a 5,000 S.F. building with about 45 parking spaces, plus a drive-through. Before going through a lot of planning and expense, the applicants are looking to see if the Commission would look favorably on a project such as this. They plan to follow all of our guidelines, but he explained that a lot of the work will be within the Riverfront Area. LC told the members that the project would fall into the category of redevelopment within the Riverfront Area. As most of the area is already disturbed, it was agreed that the project appears to be an improvement to the on-site resource areas. They will be going before the Planning Board first, but will be filing an NOI with us in the near future.

7:30 (7:37) Applewood Construction – Lot 8 (fka Lot 4) Sleepy Hollow – Notice of Intent:

(Map 25, Parcel 58) (Continued from 7/26 & 8/9/05) Proposed construction of a single family dwelling, driveway, roof infiltrator, deck, grading and associated utilities within the buffer zone. Steve Eriksen, of Norse Environmental Services, Inc., was present to represent the applicant. At the last meeting we were just waiting for a DEP number. HJ asked if there were any further questions or comments from the members, then opened to abutters. Elizabeth Coughlin, 61 Lakeview Avenue, addressed the Commission. She wanted to let us know that she was very disappointed in the Planning Boards' action on the drainage control on this project. She requested and applicant was willing to propose a low impact, bio-retention area in the center of the cul de sac, but Planning Board wanted it all paved. LC reminded the Commission that they had already closed the Roadway/Subdivision NOI. This hearing is for Lot 8. There was discussion regarding snow storage areas as shown on the plan on Lot 8. Mr. Eriksen said that it could be moved to another area, but to keep in mind that areas may be designated as snow storage, but the person plowing the road may not always push the snow to that area. Randy Dean, 57 Lakeview Avenue, asked who would monitor the deed restrictions that the applicant promises to write into each new deed upon sale of lots. LC said she will make sure each one has a deed restriction written in prior to her signing off on Occupancy Permits.

JK: Motion to close this hearing.

RS: 2nd.

Unanimous (6-0).

JK: Motion to issue an OOC for Lot 8 Sleepy Hollow Lane per revised plan dated 8/1/05 with the condition that the areas designated for snow storage be outside the buffer zone.

LG: 2nd.

Unanimous (6-0).

7:35 (7:50) Gail Joseph - 10 Cedar Lane – Notice of Intent: (Map 26, Parcel 144) (Continued from 8/9/05) Installation of a 4' x 16' dock within Lake Mascuppic. LC said that we had only been waiting for a DEP number for this filing. We have it now, and DEP commented that the applicant needs to call DEP to determine if a Chapter 91 license is required for the dock.

Minutes 8/23/05 Continued.

JZ: Motion to close this hearing.

FZ: 2nd.

Unanimous (6-0).

JK: Motion to issue an OOC for a 4' x 16' dock at 10 Cedar Lane.

JZ: 2nd.

Unanimous (6-0).

7:45 (7:52) Don Crowell – 130 Lakeview Avenue – Notice of Intent: (Map 25, Parcel 42)

Proposed construction of a single family dwelling, deck, driveway, grading and associated utilities within the buffer zone.

JK: Motion to waive the reading of the legal notice.

JZ: 2nd.

Unanimous (6-0).

JK: Motion to waive the reading of the abutter list.

JZ: 2nd.

Unanimous (6-0).

Steve Eriksen of Norse Environmental Services, Inc. presented the plan for the applicant. He told them the lot used to house a Laundromat years ago, then a convenience store. It has been vacant for years. The applicant has received a variance from the ZBA for an undersized lot. LC said the project appears to meet all our setbacks. She has verified the delineation and has no issues with the project. We are still waiting for a DEP number. It will be an improvement over what is there now. Steve answered the members' questions. HJ asked for abutter comments; there were none.

JK: Motion to continue this hearing until 9/13 at 7:02 P.M.

LG: 2nd.

Unanimous (6-0).

8:00 Brad Pacheco – 80 Danforth Road – Notice of Intent: (Map 11, Parcel 30, Lot 7) Proposed construction of a driveway and utilities within the buffer zone associated with a single-family dwelling. Matt Hamor of Polaris Corp. represented Gregg Looney who asked us to correct the file. He is the applicant, not Brad Pacheco.

JK: Motion to waive the reading of the legal notice.

LG: 2nd.

Unanimous (6-0).

JK: Motion to waive the reading of the abutter list.

RS: 2nd.

Unanimous (6-0).

Matt Hamor of Polaris Engineering Corp. presented a plan and explained that the work in the buffer zone consists of installation of a well, grading for the house and construction of the driveway. LC commented that the plan maintains the 30-foot no disturb. However, the applicant does not maintain the 50-foot no-build zone as the driveway is proposed 40 feet from the bordering vegetated wetland. This is the only area that the driveway can go but it appears that the driveway could be pushed another 5-10 feet from the resource area. Hay bales and silt fence are already in place, but LC said they may want the applicant to install a new silt fence line or construction

fencing at the edge of clearing to demark that area as the silt fence is shown 70' into the woods. There was discussion regarding the proposed "driveway" that may, in future, be changed to a roadway to access a potential sub-division. Also discussed were the pros and cons of gravel versus paved roadway next to a resource area. If pavement is used, the members would like to see an infiltration trench alongside. HJ opened to abutters. Marie Acker, 81 Danforth Road, is concerned about the placement of the septic system. Matt explained that she is upgradient from the system and it is about 150' from the wetland. The system is pending Board of Health approval. LC said that we do not have a DEP number for this filing yet.

JZ: Motion to continue this hearing to 9/13 at 7:15 P.M.

RS: 2nd.

Unanimous (6-0).

Other Business:

❖ LC had asked Leon Constantine, **401 Dunstable Road**, to appear this evening to explain to the Commission why he has cleared up to the wetland and within the Riverfront Area, without prior approval from the Commission. His OOC did not permit him to disturb these areas. Leon said he had an arborist examine all the trees after one fell on his neighbor's property. He said he was afraid that more would fall and hurt someone or damage property. HJ told him a quick call to Lori would have kept him out of trouble with the Commission. There was discussion of replanting to restore the 30' no-touch zone. The members decided a **site visit** was in order. It was set for Monday 8/29, at 6:30 P.M.

❖ Walter Eriksen approached the Commission with a request to repair/replace a culvert at the corner of Middlesex Road and Tyng Road that the crew damaged while doing the new water/sewer line for Maple Ridge/ Merrimack Landing projects. Middlesex Road is a State Road and does not fall under the Highway Town Maintenance OOC. Walter asked that he be allowed to do the work under an **Emergency Certification**, as it is a public safety issue. He will file an *as-built* along with a Notice of Intent immediately upon completion. He said he has applied for a State Permit with MassHighway and is awaiting approval.

JK: Motion to issue an Emergency Certification for replacement of a broken culvert at the corner of Middlesex Road and Tyng Road.

JZ: 2nd.

Unanimous (6-0).

❖ LC referenced a letter dated August 7, 2005, from Thomas E. Murray, Jr. requesting to **Amend** an OOC (DEP# 309-669) for **61 Progress Avenue**, to change the water quality system from the approved *Highland System* to a *Vortechnic System*. The letter claims that they are responsible for maintenance of the system and feel that the Vortechnic System will perform better and will be easier to maintain. They included reference material. LC said that we need to set up an escrow account for a review of the change.

JK: Motion to set up a 53G account with \$500.00 and authorize Holmberg & Howe to perform the review.

Minutes 8/23/05 Continued.

LG: 2nd.

Unanimous (6-0).

❖ **Director Determination for 299 Westford Road** – Kevin Cashman – who is working under an OOC, but wants to clear more trees within the 30' area. About 9 dying 12" maples, LC has no issue with. But he also wants to remove about 17 pine trees, 3 larger than 12', of which only 2 are dead. He will leave the stumps. The consensus was to allow him to remove only the dying trees.

JK: Motion to approve the Director Determination for removal of *dead* trees at 299 Westford Road.

JZ: 2nd.

Unanimous(6-0).

❖ **Director Determination for 117 Mascuppic Trail** – Alfred Levesque. This is an after the fact request for permission to replace and extend a deck (10' x 16') 60' from the lake. The disturbance equals the addition of 4 sonar tubes.

LG: Motion to approve the Director Determination for 117 Mascuppic Trail.

JZ: 2nd.

Unanimous (6-0).

❖ **Director Determination for Kelly Campbell – 3 Shetland Circle.** The applicant needs to clear some trees to install a pool under an existing OOC. Up to 13 trees of 12" plus diameter, up to the 30' line

JZ: Motion to approve the Director Determination for removal of trees at 3 Shetland Circle.

JZ: 2nd.

Unanimous(6-0).

❖ **Director Determination for 47 Pawtucket Boulevard** – Bob Clohesy – to remove one large oak tree, 50' from the River, that is leaning and if it falls it could damage the bank. He plans to leave the stump.

JK: Motion to approve the Director Determination for removal of one large oak tree at 47 Pawtucket Boulevard.

JZ: 2nd.

Unanimous(6-0).

❖ **Director Determination for 79 Mascuppic Trail** – Joan Trudell – to remove one large pine tree, 20' from the Lake, that got hit by lightning. They will use a crane to reach it and will leave the stump.

JK: Motion to approve the Director Determination for removal of one large pine tree at 79 Mascuppic Trail.

JZ: 2nd.

Unanimous(6-0).

Minutes 8/23/05 Continued.

❖ Darlene Dumais of 53 Mascuppic Trail informed LC of a complaint she has against the contractor that was building a retaining wall under an approved OOC. The contractor (Sunny Meadow) was not following the OOC and the work was not being done correctly. She has asked LC to write a letter regarding the breach of the OOC, as she may need it if the action goes to court. The Commission agreed she should write the letter.

❖ LC told the members that DEP has sent us a letter regarding work that will be occurring on the drainage swale at the Charles George Landfill.

❖ There is a problem with the Missick Realty project at Massapoag Road. It appears that the Massapoag Rod and Gun Club deeded the easement to access the new roadway, Wilson Way, over to the abutter, Hudzik, in error. Now Mr. Hudzik is denying access. Missick may have to go back to Planning Board and revert back to the ANR plan to use Massapoag Road.

❖ LC asked if the members wanted her to write a letter to the Board of Selectmen requesting a return of their stipends, now that they have found some money in the budget. BOS will be discussing the found money and what to do with it at their next meeting. It was agreed LC should write the letter.

❖ LC said we need a vote to hire someone to mow the *Sherburne Property* fields as soon as possible.

JK: Motion to hire Ken Times to mow the fields on the *Sherburne Property*.

JZ: 2nd.

Unanimous (6-0).

❖ Request for a **Partial Certificate of Compliance** for Joseph Armstrong for **4 Chelsea Way**. The OOC was for the whole sub-division and this lot is not in the buffer zone.

JZ: Motion to issue a partial CC for 4 Chelsea Way.

JK: 2nd.

Unanimous (6-0).

❖ The members signed the OOCs for Lot 8(fka Lot 4) Sleepy Hollow Lane and 10 Cedar Lane, and Negative Determination for Maple Ridge revised meter pit and roadway change.

JK: Motion to approve the minutes of the meeting of August 9, 2005.

LG: 2nd.

5 Yeas; 1 Abstain (FZ had not been present). **Motion Carried.**

The Commission welcomed Frank Zarba as a full, voting member.

❖ There was discussion of what the members saw at the site visit to 1 & 7 Alden Street. It was agreed that both parties need to apply for Ch.91 licenses. JK feels that McCarthy's footings are impeding the flow. RS feels that McCarthy has done his best to clean things up and agrees with McCarthy that the shoreline has not changed since '95 as per the map dated '95. JK said that

Minutes 8/23/05 Continued.

regardless of that, the block style footings are impeding the flow and that is against his OOC. None of the other docks in the neighborhood have those footings. Most are of pipes and plates. The Commission instructed LC to have Mr. McCarthy change the footings on the first section of the dock, and to apply for a Ch. 91 license.

FZ: Motion to adjourn.

JZ: 2nd.

Unanimous (6-0)

Meeting adjourned at 9:42 P.M.

Minutes taken and respectfully submitted by Gloria Clancy, Clerk